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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

19

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 22 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, an interior design wholesaler, filed the nonimmigrant petition seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer in a culturally unique program. The petitioner seeks to temporarily employ the beneficiary as a [REDACTED] at its showrooms in Atlanta, Dallas, Chicago, New York and Las Vegas for a one-year period.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary's performance or art form is culturally unique or that he would be performing at events that are culturally unique.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the director's decision applies restrictive requirements and qualitative standards that are not found in the regulations governing the P-3 nonimmigrant visa classification. Counsel further contends that the director ignored the opinions of experts who attested to the authenticity of the beneficiary's skills in performing a unique or traditional art form.

I. The Law

Section 101(a)(15)(P)(iii) of the Act, provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

- (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

Congress did not define the term "culturally unique," leaving that determination to the expertise of the agency charged with the enforcement of the nation's immigration laws. By regulation, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)), defined the term at 8 C.F.R. § 214.2(p)(3):

Culturally unique means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;

- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

- (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
- (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

Finally, the regulation at 8 C.F.R. § 214.2(p)(6)(ii) states that a petition for P-3 classification shall be accompanied by:

- (A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or
- (B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and
- (C) Evidence that all of the performances or presentations will be culturally unique events.

The record of proceeding includes the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, a request for evidence ("RFE") dated December 1, 2009 and the petitioner's response to the RFE, the director's decision, and the petitioner's appeal.

II. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 23, 2009. The petitioner, an [REDACTED] with showrooms in Atlanta, Dallas, Chicago, New York and Las Vegas, indicated that the beneficiary will "appear as a Guest Star Violin Soloist" at its showrooms "to entertain customers."

In a letter accompanying the petition, the petitioner provided the following information regarding the beneficiary:

The beneficiary . . . is a [redacted] born violinist who possesses a culturally unique style of music and entertainment. [The beneficiary] is well-known in [redacted] as a violinist and musician, both as a soloist and as a violinist/concert master in the [redacted]. He was born in [redacted] and started playing the violin at the age of three. [The beneficiary] gained a place to study violin at the world famous [redacted] School of Music at the age of 10, and later won a scholarship to study at the junior Department of the [redacted]. He earned his Bachelor of Music from [redacted]. He has been the leader (concert master) of a successful national orchestra – the [redacted] Philharmonic Concert Orchestra. He has been a lead violinist in [redacted] productions of the musical, [redacted] and the English production of [redacted]. [The beneficiary] has performed in many recording sessions for top recording artists, such as [redacted]. He has performed regularly, both live and in recording, on two [redacted] television shows: [redacted] both produced by [redacted] production company, [redacted] media. More recently, [the beneficiary] has been recording at the world famous [redacted] for [redacted] on [redacted] new project, [redacted] the sequel to [redacted] hit, [redacted]. [The beneficiary] typifies the best in [redacted] music and brings a [redacted] form of musical artistic expression in his violin performances.

The petitioner described the nature of the beneficiary's proposed performances as follows:

In order to entertain our customers in our showrooms, obtain more customers, and generate more interest in our lines of products, we have scheduled a series of live performances by [the beneficiary] at each of our showrooms across the United States. He will perform live music at our showrooms in Atlanta – [redacted] Dallas – [redacted] Chicago [redacted] New York City – [redacted] Las Vegas – [redacted]. Depending upon the success of these live performances, and [the beneficiary's] busy schedule, we would like him to return several months later for Spring performances, Summer performances, and Fall performances at our showrooms since the home décor-interior design products displayed are updated on a seasonal basis.

In response to the director's Request for Evidence, the petitioner, through counsel, further explained that the beneficiary "is a master of the [redacted] musical tradition," who "learned his craft under the tutelage of leading violin professors of the [redacted]."

The petitioner's international sales representative, [redacted], also submitted a letter explaining that the petitioner's new line of products will be "focusing on the English/Colonial style," and will include "a range of English-inspired products." [redacted] indicates that the petitioner "booked [the beneficiary] specifically for his expertise and knowledge of English music and his very English style of violin playing and music making." She further states that "it would be a great benefit to have an authentic and highly experienced [redacted] professional musician to perform the music and classics of the English musical culture to promote the historic wealth of style and design of the [redacted]."

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiary's performance or art form is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work. The petitioner has submitted both types of evidence in support of the petition.

A. Affidavits, testimonials or letters from recognized experts

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill.

The beneficiary initially submitted a letter dated October 20, 2009 from [REDACTED], a senior professor of violin at the [REDACTED]. He indicates that he has known the beneficiary for almost twenty years and considers him to be "a musician of exceptional talent, both as a soloist and as an orchestral player and concert master."

In the RFE issued on December 1, 2009, the director advised the petitioner of the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A), observing that the letter from [REDACTED] failed to mention that the beneficiary's performance is considered culturally unique or that the beneficiary is skilled in performing a culturally unique style of music.

In response to the RFE, the petitioner submitted five expert letters in support of this criterion, including a new letter dated December 6, 2009 from [REDACTED] who states:

. . . I am contacting you again regarding [the beneficiary's] credentials both as a talented and experienced professional musician and also of the fine example he presents of the English tradition of violin playing.

His training from a very young age from the best English teachers and his experience of the repertoire of the music of [REDACTED] is truly wide reaching, making him an ideal and unique personality to perform his style of music in other countries and to other cultures.

I am aware of his musical education with distinguished professors of the English method and his European training at prestigious institutions such as the [REDACTED] School of Music, and have performed with him and heard him perform on many occasions in uniquely [REDACTED] programmes, from popular works such as the [REDACTED] to the more intellectual and lesser known music of [REDACTED] composers. He also has experience of working in the more commercial side of [REDACTED] music for composers such as [REDACTED] who specializes in a more uniquely European style of musical theatre.

[REDACTED] concludes that he "can wholeheartedly recommend [the beneficiary] as a fine example and worthy representative of the musical culture and particular musical style of the [REDACTED]"

The petitioner also submitted a letter from [REDACTED] a retired cello professor. [REDACTED] states:

I have worked with [the beneficiary] on many occasions and I feel that he represents the best tradition of the English school of violin playing. He studied from a young age with one of the most respected and esteemed violin professors of the English school, [redacted] and also had regular coaching from the famed English [redacted] and members of the internationally renowned [redacted]. His time at the [redacted] as a child is also a factor in his very European musical training and education, with his experience there of being taught by and working with many leading exponents of [redacted].

I have worked with [the beneficiary] on many occasions, both in the chamber music and orchestral field, and he has a great knowledge and experience of [redacted] music. We have performed together many works of the great [redacted] composers such as [redacted], bringing it to audiences in various locations across Europe. He also has much experience in performing [redacted] music to international audiences. My wife, [redacted] is a successful Orchestral booker/fixer and engages musicians for Cruise ships, booking him on many occasions to perform, with great success, on various cruise liners. One of the main musical events that her musicians present on cruises is a performance of [redacted] a traditional annual concert celebration of [redacted] and celebration of [redacted] consisting of a programme of well-known [redacted] anthems and [redacted] music. He has performed in this genre on countless occasions with utmost authenticity and understanding and to the very highest standard.

[redacted] a professional pianist, conductor and choir musical director also provided a letter in support of the petition. [redacted] states that the beneficiary would be "a great ambassador of English music and culture overseas." He further discusses the beneficiary's musical training and states:

I feel he represents the best of the English school of musical training, learning with some of the most renowned teachers and professors of the English style including professor [redacted] who produced some of the finest and most successful violinists of the [redacted] school of their generation.

With his unique European training and great depth of knowledge and experience of English music and [redacted] musical culture, I feel he has a lot to offer the rich artistic culture of the United States. . . .

The petitioner provided a letter from [redacted] a cellist with the [redacted] states:

[The beneficiary] is an experienced performer and exponent of the musical culture and repertoire of [redacted] having studied with some of the most reputable teachers of the English method, both in solo training and in chamber music. Having had great experience of the [redacted] musical spectrum myself, performing much of the music of this country and premiering new works by current [redacted] composers with my quartets, I can only highlight [the beneficiary's] knowledge of the [redacted] musical field and his suitability for bringing this tradition to foreign audiences from his unique cultural perspective.

Finally, the petitioner submitted a letter from [REDACTED], a professional violinist from [REDACTED]. [REDACTED] states that she met the beneficiary in 2008 and has played music with him on several occasions. She notes his "high level of competency," and notes that his "European background would bring a unique and vital dimension to America's musical landscape."

The director found the submitted letters insufficient to meet the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A). The director discussed the content of each letter and found that the letters failed to specify how the beneficiary's performances of classical and contemporary music fall within the regulatory definition of "culturally unique." The director noted that, while several of the testimonials referred to an "English method," or [REDACTED] musical style, the record contains no details or documentation specifying what this method or style entails or how it is culturally unique to [REDACTED].

On appeal, the petitioner asserts that the beneficiary "is well known in [REDACTED] music circles and performs a traditional art form – the violin in an identifiably [REDACTED] style." Counsel asserts that the director's decision "ignores/muffles the evidence in the record that attests to the authenticity of the beneficiary's skills in performing, presenting . . . unique or traditional art form." Counsel contends that all five expert letters attest to the beneficiary's skills in performing and presenting a unique and traditional art form. Specifically, counsel states:

All letters provided the credentials of the authors. All authors are familiar with [the beneficiary's] work. All experts opined that traditional [REDACTED] music performed by [the beneficiary] had a [REDACTED] style, a [REDACTED] sound, and was "culturally unique." For example, [REDACTED] writes that [the beneficiary] "represents the best tradition of the English school of violin playing." An updated letter from [REDACTED] similarly noted that [the beneficiary] has performed [REDACTED] to more intellectual and lesser-known music of [REDACTED] composers," as well as with more commercial [REDACTED] music with [REDACTED].

Counsel further states that the director's decision "goes back to the qualitative approach rejected in the final 1994 regulations." Counsel quotes extensively from the commentary accompanying the Final Rule implementing the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, 59 F.R. 41818-42.

Upon review, counsel's assertions are not persuasive. The director properly determined that the submitted letters from experts fail to establish that the beneficiary performs a unique or traditional art form that falls within the regulatory definition of "culturally unique."

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires "letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill."

As a matter of discretion, USCIS may accept expert opinion testimony.¹ However, USCIS will reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

Here the authors of the expert opinion letters do not attest with any specificity to the cultural or traditional elements of the beneficiary's performance or the authenticity of his skills in performing a culturally unique art form. The AAO does not doubt the expertise of the authors in the field of orchestral classical music, or the beneficiary's skills and innate talent as a classically-trained violinist. However, as noted by the director, what has not been established is the cultural uniqueness of the beneficiary's skills. As the petitioner has chosen to put forth the extremely vague claim that the beneficiary plays the violin in "an identifiably [REDACTED] style," it is reasonable to require an explanation as to what characterizes that style, how it is considered unique to [REDACTED] and how it is distinguishable from other classical and contemporary methods or styles.

The fact that the beneficiary is [REDACTED] was trained in [REDACTED] music schools by [REDACTED] and has performed music by [REDACTED] classical and contemporary composers does not necessarily make his performance of classical and contemporary violin music culturally unique to [REDACTED]. However, these facts appear to form the basis of the petitioner's claim. In fact, at the time of filing, the petitioner did not contend that the beneficiary's performance is "culturally unique," but rather emphasized his talents, accomplishments and training and the fact that he [REDACTED]. Clearly, eligibility for P-3 classification requires something more than establishing that the beneficiary is foreign and has trained and performed in his or her own country.

On appeal, counsel attempts to compare the beneficiary's performance as analogous to that of an American rap singer, as follows:

¹ Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. *Black's Law Dictionary* 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about whether something occurred or did not occur, based on the witness' direct personal knowledge. *Id.* (defining "written testimony"); see also *id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, or credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

This is not a case of a [REDACTED] musician performing American rap music or American country music. Those music genres are culturally unique (and most Americans would readily understand that), have a particular style and sound. The musical genres come from distinct geographic parts of the United States and represent subcultures within the United States. If this music were performed in Europe by American performers, the Europeans would have no hesitation stating that these are uniquely American forms for music and American culture.

Counsel's analogy is unpersuasive because the petitioner has not established that the works of [REDACTED] or the music performed on the [REDACTED] programs [REDACTED] are uniquely [REDACTED] in the same way that rap music is uniquely American. It would be reasonable to compare the beneficiary to a classically-trained American violinist whose repertoire includes American musical theatre composers and who has appeared on television programs such as [REDACTED]. Such a performer would not likely be considered to be a performer of uniquely American forms of music.

The AAO acknowledges counsel's contention that the director's decision "goes back to the qualitative approach rejected in the final 1994 regulations." The "qualitative standards" that were rejected in the final regulations were the requirement that the beneficiary have achieved international acclaim and the requirement that the beneficiary's events be sponsored by cultural, governmental or educational institutions. The regulations continue to require the petitioner to submit evidence that addresses the cultural uniqueness of the beneficiary's performance. The director appropriately applied the evidentiary requirements. As noted by the director, the petitioner has not laid an adequate evidentiary foundation to support a finding that there is a distinctly [REDACTED] classical or contemporary violin tradition that is unique to [REDACTED] culture in general or unique to a particular class, ethnicity, religion, tribe or other group of persons.

Finally, the AAO acknowledges that the petitioner provided a "no objection" labor consultation letter from the American Federation of Musicians. While this letter satisfies the regulatory requirement for a written consultation at 8 C.F.R. § 214.2(p)(ii)(2), it cannot take the place of the affidavit, testimonial or letter required by 8 C.F.R. § 214.2(p)(6)(ii)(A), or otherwise be used to satisfy this separate evidentiary requirement.

Therefore, the AAO concurs with the director's determination that the petitioner failed to establish that the beneficiary possesses skills that can be considered "culturally unique" pursuant to 8 C.F.R. § 214.2(p)(3).

B. Documentation that the performance of the alien or group is culturally unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires the petitioner to submit documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

The petitioner submitted an undated article from an unidentified newspaper which reviews the [REDACTED] Philharmonic Concert Orchestra's performance [REDACTED]. The beneficiary is featured in the article. According to the review, the program featured [REDACTED] the theme music from the films [REDACTED]. The review mentions [REDACTED] and mentions that the program included community singing of [REDACTED]. However, the review makes no mention of the cultural uniqueness of the beneficiary's performance or of the

program as a whole. While the review indicates that [REDACTED] patriotic music was included as part of the program, the program as a whole does not appear to have featured culturally unique [REDACTED]. The sole article submitted fails to illuminate the critical element - that the beneficiary's performance is culturally unique.

Based on the foregoing, the petitioner has not submitted reviews or other published materials documenting that the beneficiary's performance is culturally unique, as required by 8 C.F.R. § 214.2(p)(6)(ii)(B).

C. Evidence that all of the performances or presentations will be culturally unique events

The director determined that the beneficiary's proposed in-store performances at the petitioner's showrooms would serve the sole purpose of promoting the petitioner's products, rather than qualifying as culturally unique events intended to further the understanding of a particular art form.

On appeal, counsel asserts that the beneficiary would not be performing in the petitioner's showrooms to "hawk Petitioner's merchandise," but rather would serve the purpose of increasing the appreciation for [REDACTED] in a [REDACTED] milieu (in a showroom that displays [REDACTED] products)." Counsel contends that the fact that the cultural event has some commercial aspects does not disqualify it from the P-3 regulations.

The AAO agrees, in part with counsel's assertions. The event at which the beneficiary will perform does not have to be purely cultural or non-commercial. Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's musical performances are culturally unique, the fact that such performances would take place in a venue designed for commercial purposes is entirely irrelevant. Although the statute and regulations refer to a "commercial or noncommercial program that is culturally unique," the term "program" is not defined and no specific requirements are set forth for the petitioner to establish that such a program exists. Rather, the petitioner is required to submit evidence that "all of the performances or presentations will be culturally unique events." An event is defined as an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement, and can include an entire season of performances. 8 C.F.R. § 214.2(p)(3). In this case, the beneficiary's contract with the petitioner can be considered the "entertainment event or engagement." The petitioner does not have to be a cultural organization or operate an overtly non-entertaining or non-commercial cultural program dedicated solely to the culturally unique art form.

However, the AAO concurs with the director's ultimate conclusion because, as discussed above, the petitioner has not established that the beneficiary's classical violin performances themselves are culturally unique. For this reason, it cannot be concluded that any of the beneficiary's performances would be "culturally unique events." The AAO notes that the petitioner's advertisement for the beneficiary's live performances identify the beneficiary as an "international violin soloist" and make no mention of the beneficiary's uniquely [REDACTED] violin tradition or the [REDACTED] products to be sold as part of the petitioner's new line.

Based on the foregoing, the petitioner has not established that the beneficiary's performances will be culturally unique events as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

III. Conclusion

In summary, the statute requires that the beneficiary enter the United States solely to perform, teach, or coach under a "program that is culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiary under this section of the Act, the petitioner must submit evidence that all of the beneficiary's performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3); 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements. Accordingly, the petition will be denied.

Nothing in this decision should be taken to suggest that the AAO fails to recognize or appreciate the talent the beneficiary possesses, or as an indication that he is not a highly accomplished concert violinist. This denial does not preclude the petitioner from filing a new visa petition in a more appropriate classification, supported by the required evidence. As always, the burden remains with the petitioner to establish eligibility for the requested visa classification.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.